

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6983

BILL NUMBER: HB 1203

NOTE PREPARED: Mar 5, 2004

BILL AMENDED: Mar 4, 2004

SUBJECT: Coal Mine Reclamation Permit Bonds and Water Issues.

FIRST AUTHOR: Rep. Frenz

BILL STATUS: Enrolled

FIRST SPONSOR: Sen. Weatherwax

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: This bill authorizes the director of the Department of Natural Resources (DNR) to (1) initiate an application for the release of a reclamation plan performance bond; and (2) require operators to withdraw from the surface coal mine reclamation bond pool under certain circumstances. The bill allows a mine operator to withdraw from the bond pool upon replacing bond pool liability with bonds acceptable under the surface coal mining and reclamation bonding law.

The bill also requires certain findings and documentation for certain mine land reclamation projects funded by a governmental entity. The bill amends membership and appointment authority of the surface coal mine reclamation bond pool committee. It amends definition of "government financed construction".

This bill specifies that water may be diverted from Lake Michigan only if the diversion is approved by the governor of each Great Lakes state under federal law. The bill restates enforcement and penalty provisions for violations under the jurisdiction of the Division of Water of the Department of Natural Resources (Department). It changes certain violations from a Class C infraction to a Class B infraction. This bill also requires the owner of a dam to notify the Department of the sale of the dam. The bill also allows a property owner or an individual who lives downstream from a dam over which the Department does not have jurisdiction to request the Department to investigate whether the dam is a high hazard structure if the individual believes that the failure of the dam may cause loss of life or damage to the person's home or other structures. It also provides that if the Department's investigation determines that the dam's failure may cause loss of life or damage to certain structures, the dam is subject to the Department's jurisdiction.

Effective Date: July 1, 2004.

Explanation of State Expenditures: *Coal Reclamation:* The bill authorizes the director of the DNR to

initiate bond release. If this were done, the DNR would undertake notification and certification requirements of the permittee. The DNR would also have the authority to require an operator to replace bond pool surety with conventional surety if final release has not been obtained in a timely manner. The DNR could withdraw or suspend an operator from the bond pool if that operator did not provide conventional surety on areas to be removed from the bond pool. Also, an operator would no longer be required to keep an area in the bond pool if that operator replaced the bond pool surety with conventional surety.

When the DNR is considering a mine land reclamation project that is

- (1) at least 50% funded by funds appropriated from a governmental entity that finances the construction through either the entity's budget or general revenue bonds or less than 50% funded by funds appropriated from a governmental entity that finances the construction through either the entity's budget or general revenue bonds if the construction is an approved reclamation project under Title IV of the federal Surface Mining Control and Reclamation Act of 1977;
- (2) when the level of funding for the construction will be less than 50% of the total cost because of planned coal extraction;

the DNR must determine the likelihood that coal will be mined under a surface coal mining and reclamation operations permit. The determination must consider available information, including coal reserves from existing mine maps; existing environmental conditions; all prior mining activity on or adjacent to the site; current and historical coal production in the area; any known or anticipated interest in mining the site; the likelihood that nearby mining activities might create new environmental problems; and the likelihood that nearby mining activities at the site might adversely affect nearby mining activities.

If a decision is made to proceed with the reclamation project, the DNR must determine the limits on any coal refuse, coal waste, or other coal deposits that can be extracted under the exemption and the delineation of the boundaries of the abandoned mine lands reclamation project.

DNR determinations, information taken into account in making the determinations, and the names of the persons making the determinations must be included in the abandoned mine lands reclamation case file.

For each project the DNR must characterize the site in terms of mine drainage, slide prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrological balance and ensure that the reclamation project is conducted according to applicable law. The DNR must develop specific site reclamation requirements and require the contractor conducting the reclamation to provide applicable documents that authorize the extraction of coal and any payment of royalties. The contractor must obtain a surface coal mining and reclamation operations permit for any coal extracted beyond the limits of the incidental coal.

With respect to the fiscal impact, the workload of the employees of the DNR Division of Reclamation would be affected, although the addition of staff or equipment should not be required and is not anticipated. Administrative expenses for the DNR would increase; however, the DNR should be able to absorb any additional costs given its current budget and resources.

Surface Coal Mine Reclamation Bond Pool Committee: The bill amends membership and appointment authority of the Surface Coal Mine Reclamation Bond Pool Committee. The DNR Director, as opposed to the Governor, appoints Committee members. Term limits for members are eliminated, and the Committee is only required to meet at least once as opposed to two times a year. This provision will have minimal, if any, fiscal impact.

Great Lakes Commission - The Great Lakes Commission is made up of representatives from eight midwestern states, including: Indiana, Illinois, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin. The Commission also consists of members from the Canadian provinces of Ontario and Quebec. This provision will not have a fiscal impact on the Great Lakes Commission as this language makes Indiana's statute conform to the federal law under which the Commission operates.

Dam Inspection - This provision of the bill allows a person to request the Department of Natural Resources to declare certain dams as high hazard structures. If such a request is received by the Department, this provision would require the Department to investigate the structure and area downstream, determine if the structure is a high hazard and issue a written notice of the determination. This provision has a minimal fiscal impact, if any, as its requirements should fit into the Division of Water's existing budget.

Explanation of State Revenues: *Penalty Provision* - This bill changes various penalties throughout the Division of Water's statutes from Class C infractions to Class B infractions. The affected penalties are in regards to the following topics: lake preservation, lowering of 20-acre lakes, crossing levees, building in flood control areas and construction of channels.

Revenue to the state General Fund could increase if an infraction is changed from Class C to Class B. The maximum judgment for a Class C infraction is \$500, while the maximum judgment for a Class B infraction is \$1,000. Proceeds from infraction judgments are deposited in the state General Fund.

No additional revenue from court fees would be expected since the court fees for both infraction types are \$70 effective July 1, 1997.

Civil Penalty - Current statute provides that the Division of Water may assess a civil penalty of not more than \$10,000 for any violation of the articles relating to: lakes and reservoirs; levees, dams and drainage; flood control; and rivers, streams, and waterways. Revenue collected from this civil penalty is to be deposited in the Water Environmental Fund. This bill replaces certain civil penalties, that may not exceed \$1,000 and are currently deposited in the General Fund, with the civil penalty provision of IC14-25.5-4 which directs these penalties to the dedicated fund. The state General Fund will experience a decrease in revenue from the deleted civil penalties since revenue from this source will now be deposited in a dedicated fund.

Net impact on the state General Fund regarding these two provisions is unknown.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Penalty Provision* - No additional revenue would be expected since the court fees for both infraction types are \$70 effective July 1, 1997.

State Agencies Affected: Department of Natural Resources.

Local Agencies Affected:

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